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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	: Paul J. BRADY et al.	Group Art Unit: 2161
Appln. No.	: 10/628,211	Examiner: Brent S. STACE
Filed	: July 29, 2003	Confirmation No.: 5476
For	: GATEWAY FOR EFFICIENTLY IDENTIFYING AN END USER'S LOCAL SERVICE PROVIDER	

APPEAL BRIEF UNDER 37 C.F.R. §41.37

Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Appeal Brief - Patents
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

  This appeal is from the final rejection of claims 1-3, 9, 18, 21-24, 28-39, 42 and 43 as set forth in the Final Office Action of January 15, 2008. A Notice of Appeal was filed on April 15, 2008 in response to the Final Office Action of January 15, 2008. The requisite fee for filing an Appeal Brief under 37 C.F.R. §41.20(b)(2) is submitted herewith. However, if for any reason the necessary fee is not associated with this file or the attached fee is inadequate, the Commissioner is authorized to charge the fee for the Appeal Brief and any other necessary fee, including extension of time fees, to Deposit Account No. 19-0089.

(1) **REAL PARTY IN INTEREST**

  The real party in interest is AT&T Knowledge Ventures, L.P., as established by a Change of Name filed in the U.S. Patent and Trademark Office on June 11, 2008, and based on an Assignment recorded in the U.S. Patent and Trademark Office on January 5, 2004, at Reel

014849 and Frame 0188.

(2) **RELATED APPEALS AND INTERFERENCES**

No related appeals and/or interferences are pending.

(3) **STATUS OF THE CLAIMS**

Claims 1-3, 9, 18, 21-24, 28-39, 42 and 43, all of the claims pending in this application, stand finally rejected and are the subject of this appeal. Claims 4-8, 10-17, 19, 20, 25-27, 40 and 41 have been previously canceled. Appellants appeal the final rejection of claims 1-3, 9, 18, 21-24, 28-39, 42 and 43 . A copy of claims 1-3, 9, 18, 21-24, 28-39, 42 and 43 is attached as an Appendix to this brief.

(4) **STATUS OF THE AMENDMENTS**

The Amendment that was filed on November 6, 2007 has been entered.

(5) **SUMMARY OF THE CLAIMED SUBJECT MATTER**

Initially, Appellants note that the following descriptions are made with respect to the independent claims and include references to particular parts of the specification. As such, the following are merely exemplary and are not a surrender of other aspects of the present invention that are also enabled by the present specification as well as those that are directed to equivalent structures or methods.

Independent Claim 1

Independent claim 1 recites a method of identifying a local service provider of a caller in response to a telephone call from the caller to a called party. A request is received in a first format from a sender for an identity of the caller's local service provider, the call having been suspended at a switch of an interexchange carrier. Another request is sent in a second format to an LNP database, based on a telephone number of the caller, to determine which of a plurality of databases to query. The second format is distinct from the first format. An identification of a database to query is received from the local number portability (LNP)[1] database. A message type is determined and sent to the identified database, and a query is launched to the identified database. An identification of the caller's local service provider is received from the identified database in response to the query. A notification is sent to the sender, and the notification includes identifying information of the identified local service provider of the caller and whether an agreement exists between the identified local service provider and the interexchange carrier. The interexchange carrier uses the notification to decide whether to connect the suspended call to the called party.

In this regard, exemplary embodiments of the present specification are shown in FIG. 3, and disclosed at page 16, line 16 – page 18, line 2. A method of identifying a local service provider of a caller (325) in response to a telephone call (1) from the caller (325) to a called party (395), the method comprising: receiving a request (2) in a first format from a sender for an

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[1] In some states, the originating central office "dips' into a centralized database of numbers via a signal system 7 (SS7) data link. The database, known as a SCP (Service Control Point) in IN (Intelligent Network) terms, identifies the LEC (local exchange carrier) providing service to the target telephone number in order that the originating carrier can hand the call off to the terminating carrier. See, the definition of LNP in Newton's Telecom Dictionary, 2007.

identity of the caller's (325) local service provider, the call having been suspended (2) at a switch (329) of an interexchange carrier; sending a request (3) in a second format to an LNP database (359), based on a telephone number of the caller (325), to determine which of a plurality of databases (360) to query, the second format being distinct from the first format; receiving (4) an identification of a database to query from the LNP database (359); determining (5) a message type to send to the identified database to query; launching (6) a query to the identified database (360); receiving (7) an identification of the caller's (325) local service provider from the identified database (360) in response to the query (5); and sending (9) a notification to the sender, the notification comprising identifying information of the identified local service provider of the caller (325) and whether an agreement exists between the identified local service provider and the interexchange carrier, wherein the interexchange carrier uses (10) the notification to decide whether to connect the suspended call to the called party (395).

Independent Claim 18

Independent claim 18 recites a system for identifying a local service provider of a caller associated with a telephone call from the caller to a called party. A gateway including a plurality of platforms is configured to dynamically load share requests. The gateway receives a request in a first format requesting an identification of the local service provider of the caller, and the gateway is configured to determine one of a plurality of message types in which to query an identified database. The identified database is determined as a result of sending a request in a second format distinct from the first format to an LNP database. A response is received from the LNP database, to launch a query to the identified database, and to receive an identification of the local service provider of the caller. The gateway determines the message type based upon a cost

associated with each of a plurality of available message types and based upon a message type supported by the identified database.

In this regard, exemplary embodiments of the present specification are shown in FIG. 3, and disclosed at page 16, line 16 – page 18, line 2. A system for identifying a local service provider of a caller (325) associated with a telephone call (1) from the caller (325) to a called party (395), the system comprising: a gateway (330) comprising a plurality of platforms configured to dynamically load share requests, the gateway (330) receiving a request (2) in a first format requesting an identification of the local service provider of the caller (325), the gateway (330) configured to determine (5) one of a plurality of message types in which to query an identified database (360), the identified database (360) being determined as a result of sending a request (3) in a second format distinct from the first format to an LNP database (359) and receiving (4) a response from the LNP database (359), to launch (6) a query to the identified database (360), and to receive (7) an identification of the local service provider of the caller (325), wherein the gateway (330) determines (5) the message type based upon a cost associated with each of a plurality of available message types and based upon a message type supported by the identified database (360).

(6)   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

In the Final Rejection of January 15, 2008, claims 1, 9, 28-35, 36 and 42 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over AKINPELU et al. (U.S. Patent No. 5,661,792) in view of BOUGHMAN et al. (U.S. Patent No. 6,570,973). Claim 2 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over AKINPELU et al. in view of BOUGHMAN et al., and further in view of COCHRANE et al. (U.S. Patent No. 6,496,828).

Claim 3 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over AKINPELU et al. in view of BOUGHMAN et al., and further in view of KUNG (U.S. Patent No. 5,987,452). Claims 18, 21, 22, 24, 37-39 and 43 have been rejected under 35 U.S.C. § 103(a) as being unpatentable in view of AKINPELU et al. in view of COCHRANE et al., and further in view of KUNG. Claim 23 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over AKINPELU et al. in view of COCHRANE et al. in view of KUNG, further in view of ZEBRYK (U.S. Patent No. 4,975,942).

(7)   APPELLANTS' ARGUMENTS

A.   THE REJECTION OF CLAIMS 1, 9, 28-35, 36 AND 42 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER AKINPELU ET AL. IN VIEW OF BOUGHMAN ET AL. IS IN ERROR

1. AKINPELU ET AL. Identifies The *Presumed* Local Service Provider Of The Caller And Not The True *Identity* Of The Local Service Provider Of The Caller

The rejection of independent claim 1 is based on the mistaken belief in the Official Action, on pages 7-8, that AKINPELU et al. at col. 2, lines 64-66, col. 3, lines 50-54 and col. 4, lines 45-49, discloses identifying the true *identity* of the local service provider of the caller. More specifically, the Official Action asserts that AKINPELU et al. discloses the claimed "method of identifying a local service provider of a caller in response to a telephone call from the caller to a called party". According to the Examiner's interpretation, AKINPELU et al. at best identifies the *presumed* local service provider of the caller, and AKINPELU et al., like the other prior art, therefore, does not identify the true *identity*, when the caller has a new local service provider.

The deficiency of the prior art including AKINPELU et al. is that when and if the telephone number of the caller is sold to another local service provider, an identification of the true *identity* of the local service provider of the caller may not be known unless a local database has been updated to reflect the new or actual local service provider . Appellants disclose at page 3, lines 1-15 of the present application:
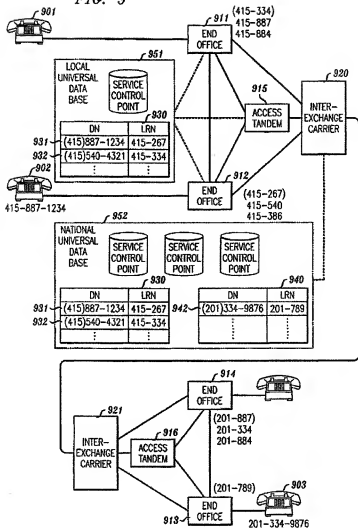
> For example, an interexchange carrier (IXC), or an agent of the IXC, uses the Local Exchange Routing Guide (LERG) from Telcordia Technologies, Inc. to identify the LSP for settlement purposes. *However, if the originating telephone number (TN) has been resold to another LSP, then a Return Code 50 reject message is returned to the IXC informing the IXC that the presumed LSP does not service a particular end user (i.e., subscriber or caller). The identity of the new LSP will not be known to the IXC, as the LERG will still identify the original LSP as the owner of record.* As a result, the IXC may attempt to identify and bill the end user's new LSP, or the end user may be billed. However, settlement may prove too costly or may be impossible, especially after several billing cycles have lapsed. [emphasis added].

Appellants' invention as recited in independent claim 1 provides a solution to this problem which is not taught, shown or suggested by AKINPELU et al., either alone or in combination with the other prior art. More specifically, Appellants' invention as recited in independent claim 1 is directed to the identification of the true *identity* of the local service provider of the originating caller so that an interexchange carrier (IXC) can determine whether an agreement exists with the local service provider of the originating caller, and can correctly bill the call, depending upon whether such an agreement exists.

2. The Deficiencies Of AKINPELU et al.

The AKINPELU et al. patent is deficient because it discloses a telecommunication network which at best, assuming the Examiner's interpretation is correct, only identifies the *presumed* local service provider of the caller. The Official Action relies heavily upon the exemplary teachings of FIG. 9 of AKINPELU et al. and its corresponding description to reject independent claim 1. FIG. 9 of AKINPELU et al. is reproduced below:

FIG. 9

In AKINPELU et al.'s telecommunications network of FIG. 9, a *caller* in California uses a telephone 901 to dial the number of a *called party* at a telephone 903 in New Jersey. If the Examiner's interpretation is correct, then the *caller's* telephone number in California is identified in a local universe data base ("LUDB") as being an owned by a *presumed* local service provider. The call is then routed to an interexchange carrier 920 which accesses a national universal database ("NUDB") 952 in order to find the identity of the switch serving the terminating telephone 903 of the *called party* in New Jersey. There is no recognition in AKINPELU et al. that the *presumed* local service provider of the caller may not be the true *identity* of the local service provider of the caller of telephone 901. AKINPELU et al. fails to even recognize the

problem or possibility that the *presumed* local service provider may be incorrect, and it certainly does not provide a solution, when the *presumed* local service provider of the caller identified in the LUDB is not the new or actual local service provider of the caller.

Since AKINPELU et al. fails to recognize the problem, there is no reason for one skilled in the art to modify AKINPELU et al. to include the additional features of claim 1 relating to a query to the LNP database for identifying the local service provider of the *caller*. For example, in claim 1 a query is specifically made in a second format to the LNP database to receive an identification of the local service provider of the *caller*. Although AKINPELU et al. may make a query to a LNP database to identify the local service provider of the *called party* in New Jersey, it is respectfully submitted AKINPELU et al. does no make query to a LNP database for the purpose of identifying the service provider of the *caller* in California. Accordingly, AKINPELU et al. fails to disclose an essential feature of claim 1.

3. BOUGHMAN Does Not Cure The Deficiencies Of AKINPELU et al.

Although the Official Action fails to recognize the deficiencies of AKINPELU et al. described above, the Official Action candidly and correctly acknowledges that AKINPELU et al. fails to disclose "wherein the interexchange carrier uses the notification to decide whether to connect the suspended call to the called party." The Official Action asserts that the secondary reference, BOUGHMAN et al., discloses this feature. Appellants respectfully submit that BOUGHMAN does not cure or supply the deficiencies of AKINPELU et al. noted above, and also does not supply any of the acknowledged deficient teachings of AKINPELU et al. BOUGHMAN et al. presumably suspends a call while querying a database and allows a wireless caller, <u>not</u> an interexchange carrier, to determine whether the wireless caller wants to complete a

toll call to a called number. (See, Fig. 2, steps 51-52.) There is no teaching in BOUGHMAN et al. that an interexchange carrier suspends a call as claimed by Appellants.

4. The Combination Of AKINPELU et al. And BOUGHMAN et al. Is Not The Claimed Invention Of Independent Claim 1

Appellants respectfully submit that even if AKINPELU et al. and BOUGHMAN et al. are combined as set forth in the Office Action, the resulting combination would not be Appellants' claimed invention. If one of ordinary skill in the art were to combine AKINPELU et al. and BOUGHMAN et al., the person of ordinary skill would substitute the access tandem 32 of BOUGHMAN et al. for the access tandem 915 of AKINPELU et al. and suspend the call while querying the intelligent network database located in the SCP 24b of BOUGHMAN et al.
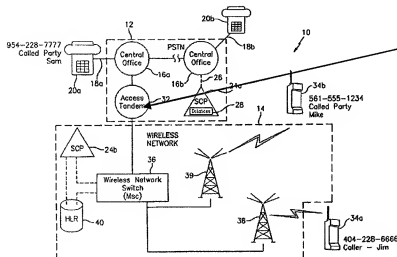

One of ordinary skill would substitute the Access Tandem **32** of BOUGHMAN et al. for the Access Tandem **915** of Fig. 9 of AKINPELU et al.

FIG. 1

The call flow of the hypothetical combination of AKINPELU et al. in view of

BOUGHMAN et al. would be as illustrated in Fig. 2 BOUGHMAN et al. which is reproduced
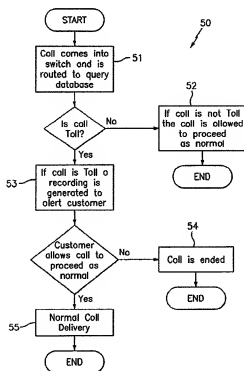
below:

FIG. 2

The call would come into the MSC 36 of BOUGHMAN et al. and be routed to the service

control point 24b and the intelligent network database as in step 51. A recording would be

generated alerting the caller that the call which is about to be made is a toll call as in step 53, and

the caller would have to decide whether to allow the call to proceed as normal. There is no basis

for believing that one skilled in the art would suspend the call at the interexchange carrier 920 of

AKINPELU et al., as asserted by the Examiner, instead of suspending the call at the SCP 24b as

taught in BOUGHMAN et al.. Accordingly, the hypothetical combination of AKINPELU et al. in view of BOUGHMAN et al. is not the Appellants' claimed invention of independent claim 1.

Accordingly, the Official Action has not established a *prima facie* case of obviousness, and the Examiner is respectfully requested to withdraw the rejection of claim 1 based upon 35 U.S.C. § 103(a) as being unpatentable over AKINPELU et al. in view of BOUGHMAN et al.

5. Claim 9

It is respectfully submitted that claim 9 is patentable over the combination of AKINPELU et al. in view of BOUGHMAN et al. for all the reasons that claim 1 is patentable. Moreover, claim 9 is further patentable over AKINPELU et al. in view of BOUGHMAN et al., which fail to disclose wherein at least one of the plurality of databases being queried to determine the caller's local service provider comprises a line information database. AKINPELU et al. appears to disclose querying only a single local universal data base 951. See, Fig. 9.

6. Claim 28

It is respectfully submitted that claim 28 is patentable over the combination of AKINPELU et al. in view of BOUGHMAN et al. for all the reasons that claim 1 is patentable. Moreover, claim 28 is further patentable over AKINPELU et al. in view of BOUGHMAN et al., which fail to disclose wherein the query comprises a GetData query. There appears to be no disclosure of the claimed GetData query in AKINPELU et al., as alleged in the Official Action.

7. Claim 29

It is respectfully submitted that claim 29 is patentable over the combination of

AKINPELU et al. in view of BOUGHMAN et al. for all the reasons that claim 1 is patentable. Moreover, claim 28 is further patentable over AKINPELU et al. in view of BOUGHMAN et al., which fail to disclose wherein the query comprises an originating line number screening query. As explained above, AKINPELU et al. does not make the claimed query for the actual or the true *identity* of the new service provider of the line number of the originating caller.

8. Claim 30

It is respectfully submitted that claim 30 is patentable over the combination of AKINPELU et al. in view of BOUGHMAN et al. for all the reasons that claim 1 is patentable. Moreover, claim 30 is further patentable over AKINPELU et al. in view of BOUGHMAN et al., which fail to disclose wherein the query comprises a billed number screening query. As explained above, AKINPELU et al. does not make the claimed query for the true *identity* of the actual or new service provider of the number which should be billed.

9. Claim 31

It is respectfully submitted that claim 31 is patentable over the combination of AKINPELU et al. in view of BOUGHMAN et al. for all the reasons that claim 1 is patentable. Moreover, claim 31 is further patentable over AKINPELU et al. in view of BOUGHMAN et al., which fail to disclose sending a request to an access routing guide to determine which of a plurality of databases to query. AKINPELU et al. appears to disclose querying only a single local universal data base 951. See, Fig. 9.

10. Claim 32

It is respectfully submitted that claim 32 is patentable over the combination of

AKINPELU et al. in view of BOUGHMAN et al. for all the reasons that claim 1 is patentable. Moreover, claim 32 is further patentable over AKINPELU et al. in view of BOUGHMAN et al., which fail to disclose wherein the access routing guide comprises a line information database (LIDB) access routing guide. AKINPELU et al. does not use a LIDB to determine a plurality of databases to query, but instead appears to disclose querying only a single local universal data base 951. See, Fig. 9.

11. Claim 33

It is respectfully submitted that claim 33 is patentable over the combination of AKINPELU et al. in view of BOUGHMAN et al. for all the reasons that claim 1 is patentable. Moreover, claim 33 is further patentable over AKINPELU et al. in view of BOUGHMAN et al., which fail to disclose an identification of the new or actual revenue accounting office, account owner, and billing service provider associated with the telephone number of the caller. As explained above, AKINPELU et al. does not make the claimed query for the true *identity* of the actual or new service provider of the number which should be billed.

12. Claim 34

It is respectfully submitted that claim 34 is patentable over the combination of AKINPELU et al. in view of BOUGHMAN et al. for all the reasons that claim 1 is patentable. Moreover, claim 34 is further patentable over AKINPELU et al. in view of BOUGHMAN et al., which fail to disclose wherein the first format comprises a text format. There appears to be no disclosure in AKINPELU et al. of the claimed receiving of a request in a first text format, as alleged in the Official Action.

13. Claim 35

It is respectfully submitted that claim 35 is patentable over the combination of AKINPELU et al. in view of BOUGHMAN et al. for all the reasons that claim 1 is patentable. Moreover, claim 35 is further patentable over AKINPELU et al. in view of BOUGHMAN et al., which fail to disclose wherein the first format comprises ASCII text. There appears to be no disclosure in AKINPELU et al. of the claimed receiving of a request in an ASCII text format, as alleged in the Official Action.

14. Claim 36

It is respectfully submitted that claim 36 is patentable over the combination of AKINPELU et al. in view of BOUGHMAN et al. for all the reasons that claim 1 is patentable. Moreover, claim 36 is further patentable over AKINPELU et al. in view of BOUGHMAN et al., which fail to disclose wherein the second format comprises an SS7 format. There appears to be no disclosure in AKINPELU et al. of the claimed sending a request in a second format, as alleged in the Official Action.

15. Claim 42

It is respectfully submitted that claim 42 is patentable over the combination of AKINPELU et al. in view of BOUGHMAN et al. for all the reasons that claim 1 is patentable. Moreover, claim 42 is further patentable over AKINPELU et al. in view of BOUGHMAN et al., which fail to disclose wherein the requests include queries and responses, and the first and second formats of the requests enable queries and responses to be correlated, thereby enabling the identification of the local service provider to occur in real time. There appears to be no disclosure in AKINPELU et al. of the claimed real time true identification of the new or actual

service provider, as alleged in the Official Action.

B.   THE REJECTION OF CLAIM 2 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER AKINPELU ET AL. IN VIEW OF BOUGHMAN ET AL. AND FURTHER IN VIEW OF COCHRANE ET AL. IS IN ERROR

Appellants respectfully submit that claim 2 is patentable over the cited prior art for at least all the reasons that claim 1 is patentable over the combination of AKINPELU et al. in view of BOUGHMAN et al. Although the Official Action fails to recognize the deficiencies of AKINPELU et al. and BOUGHMAN et al. described above, the Official Action, with respect to claim 2, candidly and correctly acknowledges that AKINPELU et al. and BOUGHMAN et al. fail to disclose "wherein the determining of message type is based upon a cost associated with each of a plurality of available message types." The Official Action, however, goes on to incorrectly assert that COCHRANE et al. discloses this feature. Appellants respectfully submit that COCHRANE et al. does not cure or supply any of the acknowledged deficient teachings of AKINPELU et al. or BOUGHMAN et al. with respect to the determining of a message type which is based upon a cost associated with each of a plurality of available message types.

Appellants respectfully submit that COCHRANE et al. does not disclose the claimed determining of a message type which is based on cost. COCHRANE et al. discloses, "It is a primary objective in designing database systems to be able to service queries with the least cost, that is, in the lowest amount of time. One manner of decreasing query response time is with the use of summary tables." Col. 1, lines 28-30. Rather than making a determination of message type based upon monetary cost, COCHRANE et al. discloses an unrelated technique for determining the lowest amount of time in querying databases. The Examiner has fundamentally misunderstood that the cost of querying a database is not the same as querying a database for cost information in the database which is related to message type. Accordingly, it is respectfully

submitted that COCHRANE et al. has little or no relevance to Appellants' claimed invention, and that there is no articulated reasoning with a rational underpinning why one skilled in the art would combine the teachings of COCHRANE et al. to the teachings of AKINPELU et al. and BOUGHMAN et al. Appellants respectfully submit that claim 2 is patentable over AKINPELU et al., in view of BOUGHMAN et al. and further in view of COCHRANE et al.

> C. THE REJECTION OF CLAIM 3 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER AKINPELU ET AL. IN VIEW OF BOUGHMAN ET AL. AND FURTHER IN VIEW OF KUNG IS IN ERROR

Appellants respectfully submit that claim 3 is patentable over the cited prior art for at least all the reasons that claim 1 is patentable over the combination of AKINPELU et al. in view of BOUGHMAN et al. Although the Official Action fails to recognize the deficiencies of AKINPELU et al. and BOUGHMAN et al. described above, the Official Action, with respect to claim 3, candidly and correctly acknowledges that AKINPELU et al. and BOUGHMAN et al. fail to disclose "wherein the determining of message type is based upon the message type supported by the identified database." The Official Action, however, goes on to incorrectly assert that KUNG discloses this feature. Appellants respectfully submit that KUNG does not cure or supply any of the acknowledged deficient teachings of AKINPELU et al. or BOUGHMAN et al. with respect to the determining of a message type which is based upon the message type supported by the identified database. KUNG relates to the searching of databases and does not relate to call routing. There appears to be no rationale or articulated reason for applying KUNG against claim 3. It appears that KUNG et al. was selected by the Examiner as a result of a random key word search rather than its relevance to the claimed invention.

D.   THE REJECTION OF CLAIMS 18, 21, 22, 24, 37-39 AND 43 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER AKINPELU ET AL. IN VIEW OF COCHRANE AND FURTHER IN VIEW OF KUNG IS IN ERROR

1. Claim 18

Claim 18 has been rejected under 35 U.S.C. § 103(a) as being unpatentable in view of AKINPELU et al. in view of COCHRANE et al., further in view of KUNG. Claim 18 is directed to a system for identifying the true *identity* of a new or actual local service provider of a caller associated with a telephone call from the caller to a called party. Claim 18 is directed to a system, whereas claim 1 is directed to a method. Accordingly, claim 18 is distinguishable from AKINPELU et al. for substantially the same reasons that independent claim 1 is distinguishable from AKINPELU et al.

The Official Action candidly and correctly acknowledges that AKINPELU et al. fails to disclose, ". . .wherein the gateway determines the message type based upon a cost associated with each of a plurality of available message types and based upon a message type supported by the identified database." The Official Action incorrectly asserts that the secondary references, COCHRANE et al. and KUNG et al. discloses this feature. Appellants respectfully submit that COCHRANE et al. and KUNG et al. do not cure or supply any of the acknowledged deficient teachings of AKINPELU et al.

COCHRANE et al. relates to the searching of databases and does not relate to call routing. The alleged cost feature of COCHRANE et al. has nothing to do with cost of a call, and COCHRANE et al. specifically teaches, "It is a primary objective in designing database systems to be able to service queries with the least cost, that is, in the lowest amount of time." Col. 1,

lines 28-30. It appears that COCHRANE et al. was selected by the Examiner as a result of a random key word search rather than its relevance to the claimed invention. As pointed out above, the Examiner has fundamentally misunderstood that the cost of querying a database is not the same as querying a database for cost information in the database which is related to message type.

Likewise, KUNG relates to the searching of databases and does not relate to call routing. There appears to be no rational or articulated reason for applying KUNG against claim 18. It appears that KUNG et al. was also selected by the Examiner as a result of a random key word search rather than its relevance to the claimed invention.

Since AKINPELU et al., COCHRANE et al. and KUNG do not disclose an identification of the true *identity* of the new or actual local service provider of the caller, as required by claim 18, or disclose the acknowledged deficiencies of claim 18 with respect to determining the message type based upon cost, it is respectfully submitted that the Office Action has failed to establish a *prima facie* of obviousness with respect to claim 18.

2. Claim 21

It is respectfully submitted that claim 21 is patentable over the combination of AKINPELU et al. in view of COCHRANE et al., further in view of KUNG for all the reasons that claim 18 is patentable. Moreover, claim 21 is further patentable over AKINPELU et al. in view of COCHRANE et al., further in view of KUNG, which fail to disclose wherein the request to identify the true *identity* of the new or actual service provider of the caller is received prior to the telephone call being connected to the called party. There appears to be no disclosure in

AKINPELU et al. of the claimed request for identifying the true *identity* of the new or actual service provider of the caller, as alleged in the Official Action.

3. Claim 22

It is respectfully submitted that claim 22 is patentable over the combination of AKINPELU et al. in view of COCHRANE et al., further in view of KUNG for all the reasons that claim 18 is patentable. Moreover, claim 22 is further patentable over AKINPELU et al. in view of COCHRANE et al., further in view of KUNG, which fail to disclose wherein the request to identify the true *identity* of the new or actual service provider is received during the pendency of the telephone call. There appears to be no disclosure in AKINPELU et al. that the claimed request to identify the true *identity* of the new or actual service provider of the caller is received during the pendency of the telephone call, as alleged in the Official Action.

4. Claim 24

It is respectfully submitted that claim 24 is patentable over the combination of AKINPELU et al. in view of COCHRANE et al., further in view of KUNG for all the reasons that claim 18 is patentable. Moreover, claim 24 is further patentable over AKINPELU et al. in view of COCHRANE et al., further in view of KUNG, which fail to disclose wherein the identified database comprises a line information database. There appears to be no disclosure in AKINPELU et al. of the claimed identified database being a line information database, as alleged in the Official Action.

5. Claim 37

It is respectfully submitted that claim 37 is patentable over the combination of AKINPELU et al. in view of COCHRANE et al., further in view of KUNG for all the reasons that claim 18 is patentable. Moreover, claim 37 is further patentable over AKINPELU et al. in view of COCHRANE et al., further in view of KUNG, which fail to disclose wherein the request is received after the call has been connected to the called party and before the call has been disconnected. There appears to be no disclosure in AKINPELU et al. of the claimed request that is received after the call has been connected and before it has been disconnected to identify the true *identity* of the new or actual service provider of the caller, as alleged in the Official Action.

6. Claim 38

It is respectfully submitted that claim 38 is patentable over the combination of AKINPELU et al. in view of COCHRANE et al., further in view of KUNG for all the reasons that claim 18 is patentable. Moreover, claim 38 is further patentable over AKINPELU et al. in view of COCHRANE et al., further in view of KUNG, which fail to disclose the identified database having been identified as a result of a request sent to an LNP database and a request sent to an access routing guide. There appears to be no disclosure in AKINPELU et al. of the claimed database having been identified as a result of a request sent to an LNP database and a request sent to an access routing guide, as alleged in the Official Action.

7. Claim 39

It is respectfully submitted that claim 39 is patentable over the combination of AKINPELU et al. in view of COCHRANE et al., further in view of KUNG for all the reasons that claim 18 is patentable. Moreover, claim 39 is further patentable over AKINPELU et al. in view of COCHRANE et al., further in view of KUNG, which fail to disclose wherein the access

routing guide comprises a line information database (LIDB) access routing guide.

There appears to be no disclosure in AKINPELU et al. of the claimed line information database (LIDB) access routing guide, as alleged in the Official Action.

8. Claim 43

It is respectfully submitted that claim 43 is patentable over the combination of AKINPELU et al. in view of COCHRANE et al., further in view of KUNG for all the reasons that claim 18 is patentable. Moreover, claim 43 is further patentable over AKINPELU et al. in view of COCHRANE et al., further in view of KUNG, which fail to disclose wherein the requests include queries and responses, and the first and second formats of the requests enable queries and responses to be correlated, thereby enabling the identification of the local service provider to occur in real time. There appears to be no disclosure in AKINPELU et al. of the claimed real time identification of the true *identity* of the new or actual service provider, as alleged in the Official Action.

E. THE REJECTION OF CLAIM 23 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER AKINPELU ET AL. IN VIEW OF COCHRANE, IN VIEW OF KUNG AND FURTHER IN VIEW OF ZEBRYK IS IN ERROR

Claim 23 has been rejected under 35 U.S.C. § 103(a) as being unpatentable in view of AKINPELU et al. in view of COCHRANE et al., in view of KUNG and further in view of ZEBRYK. Claim 23 is directed to a system for identifying the true *identity* of a new or actual local service provider of a caller associated with a telephone call from the caller to a called party and wherein the request for identifying the true *identity* of the new or actual local service provider is received after the telephone call has been disconnected. Claim 23, like claim 18, is

directed to a system, whereas claim 1 is directed to a method. Accordingly, claim 23 is distinguishable from AKINPELU et al. for substantially the same reasons that independent claims 1 and 18 are distinguishable from AKINPELU et al. According to the Official Action, ZEBRYK discloses receiving a request to identify the true *identity* of the new or actual local service provider after the call has been disconnected. Contrary to the assertions in the Official Action, ZEBRYK does not disclose a request for identifying the true *identity* of the new or actual local service provider of the caller, but instead discloses checking the validity of credit/calling cards and generating billing information. See, col. 3, lines 15-39. Accordingly, Appellants respectfully submit that claim 23 is patentable over the combination of AKINPELU et al. in view of COCHRANE et al., in view of KUNG and further in view of ZEBRYK.

F.   THE OFFICIAL ACTIONS FAILS TO ESTABLISH A *PRIMA FACIE* CASE OF OBVIOUSNESS UNDER 35 U.S.C. § 103(a) FOR INDEPENDENT CLAIMS 1 AND 18

According to MPEP § 2142, the key to establishing and supporting a *prima facie* case of obviousness under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. § 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at ___ , 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

The Official Action asserts that claim 1 is unpatentable on the basis that it would have been obvious to combine AKINPELU et al. in view of BOUGHMAN et al. ". . . because both inventions are directed to towards the use of telecommunications systems" and "Boughman's invention would have been expected to successfully work well with Akinpleu's invention because both inventions use telecommunications systems with databases and customers". (See, page 9.) The Official Action further asserts that claim 18 is unpatentable on the basis that it would have been obvious to combine AKINPELU et al. in view of COCHRANE et al., and further in view of KUNG because, ". . .the inventions are directed towards querying databases" and because "Cochrane's and Kung's inventions would have been expected to successfully work well with Akinpelu's invention because the inventions use databases." (See pages 16-17.) Appellants respectfully submit that the asserted analysis includes mere conclusory statements that are not supported by articulated reasoning. Generalized statements about the success of combining references from related fields of endeavor are insufficient. The finding of unpatentability needs to be justified by more than the generalized quoted statements identified above in order to meet the standard of "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" set forth in MPEP § 2142 in the *KSR* decision, and by Federal Circuit.

Accordingly, because the Examiner has failed to establish a *prima facie* case of obviousness, the Board is respectfully requested to overturn the Examiner's rejection of independent claims 1 and 18 as being unpatentable over .

(8). CONCLUSION

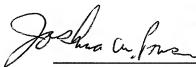In view of the herein contained arguments, Appellants respectfully request that the

decision of the Examiner to reject claims 1-3, 9, 18, 21-24, 28-39, 42 and 43 set forth in the Official Action dated January 15, 2008, be reversed together with an indication of the allowability of all pending claims. Such action is respectfully requested and is believed to be appropriate and proper.

Should an extension of time be necessary to maintain the pendency of this application, including any extensions of time required to place the application in condition for allowance by an Examiner's Amendment, the Commissioner is hereby authorized to charge any additional fee to Deposit Account No. 19-0089.

If there are any questions about this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,
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APPENDIX A: – CLAIMS APPEALED

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CLAIMS APPEALED

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1. A method of identifying a local service provider of a caller in response to a telephone call from the caller to a called party, the method comprising:

receiving a request in a first format from a sender for an identity of the caller's local service provider, the call having been suspended at a switch of an interexchange carrier;

sending a request in a second format to an LNP database, based on a telephone number of the caller, to determine which of a plurality of databases to query, the second format being distinct from the first format;

receiving an identification of a database to query from the LNP database;

determining a message type to send to the identified database to query;

launching a query to the identified database;

receiving an identification of the caller's local service provider from the identified database in response to the query; and

sending a notification to the sender, the notification comprising identifying information of the identified local service provider of the caller and whether an agreement exists between the identified local service provider and the interexchange carrier,

wherein the interexchange carrier uses the notification to decide whether to connect the suspended call to the called party.

2. The method according to claim 1, wherein the determining of message type is based upon a cost associated with each of a plurality of available message types.

3. The method according to claim 1, wherein the determining of message type is based upon the message type supported by the identified database.

4-8. (canceled)

9. The method according to claim 1, wherein at least one of the plurality of databases comprises a line information database.

10 -17. (canceled)

18. A system for identifying a local service provider of a caller associated with a telephone call from the caller to a called party, the system comprising:

a gateway comprising a plurality of platforms configured to dynamically load share requests, the gateway receiving a request in a first format requesting an identification of the local service provider of the caller, the gateway configured to determine one of a plurality of message types in which to query an identified database, the identified database being determined as a result of sending a request in a second format distinct from the first format to an LNP database and receiving a response from the LNP database, to launch a query to the identified database, and to receive an identification of the local service provider of the caller,

wherein the gateway determines the message type based upon a cost associated with each of a plurality of available message types and based upon a message type supported by the identified database.

19. (canceled)

20. (canceled)

21. The system according to claim 18, wherein the request is received prior to the telephone call being connected to the called party.

22. The system according to claim 18, wherein the request is received during the pendency of the telephone call.

23. The system according to claim 18, wherein the request is received after the telephone call has been disconnected.

24. The system according to claim 18, wherein the identified database comprises a line information database.

25 - 27. (canceled)

28. The method according to claim 1, wherein the query comprises a GetData query.

29. The method according to claim 1, wherein the query comprises an originating line number screening query.

30. The method according to claim 1, wherein the query comprises a billed number screening query.

31. The method according to claim 1, further comprising sending a request to an access routing guide to determine which of a plurality of databases to query.

32. The method according to claim 31, wherein the access routing guide comprises a line information database (LIDB) access routing guide.

33. The method according to claim 1, wherein receiving an identification of the caller's local service provider further comprises receiving an identification of a revenue accounting office, account owner, and billing service provider associated with the telephone number of the caller.

34. The method according to claim 1, wherein the first format comprises a text format.

35. The method according to claim 1, wherein the first format comprises ASCII text.

36. The method according to claim 1, wherein the second format comprises an SS7 format.

37. The system according to claim 18, wherein the request is received after the call has been connected to the called party and before the call has been disconnected.

38. The system according to claim 18, the identified database having been identified as a result of a request sent to an LNP database and a request sent to an access routing guide.

39. The system according to claim 38, wherein the access routing guide comprises a line information database (LIDB) access routing guide.

40 - 41. (canceled)

42. The method according to claim 1 wherein the requests include queries and responses, and the first and second formats of the requests enable queries and responses to be correlated, thereby enabling the identification of the local service provider to occur in real time.

43. The system according to claim 18 wherein the requests include queries and responses, and the first and second formats of the requests enable the queries and responses to be correlated, thereby enabling the identification of the local service provider of the caller to occur in real time.

APPENDIX B: EVIDENCE

(None)

APPENDIX C: RELATED PROCEEDINGS

(None)